

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FRANK D'ANTUONO, 96-B-1852,

Petitioner,

v.

DECISION AND ORDER  
05-CV-437A

JAMES T. CONWAY,  
Superintendent Attica Correctional Facility,

Respondent.

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Petitioner Frank D'Antuono commenced the instant petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on June 16, 2005. Currently before the Court is petitioner's motion, pursuant to Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, to compel the respondent to file with the Court certain transcripts and documents related to his state court proceedings. In his response to the motion, the respondent states that the documents requested by the petitioner to be filed are not "available" to the respondent because they are currently on file with the Clerk of the Appellate Division in Rochester, New York. However, respondent does not explain why he is unable to obtain such documents from the Clerk of the Appellate Division. Respondent does not contend that the requested documents should not be part of the record or that they are not necessary for the resolution of this matter. Rules 4 and 5 place the burden is on the respondent to obtain copies of such documents and to file them with the Court. Accordingly, the Court hereby grants

petitioner's motion to compel, and orders the respondent to obtain the specified transcripts and documents, or copies thereof, and file them with the Clerk of Court by no later than December 4, 2006.

This matter is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: September 26 , 2006